IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24..03..2007

C O R A M

The Honourable Mr. A.P. SHAH, Chief Justice
and
The Honourable Mr. Justice K. CHANDRU

Writ Petition No.8780 of 2007

T. Kannan .. Petitioner

Versus

1. M/s. Liberty Creations Ltd., rep. by its
   Producer cum Director Gnanarajasekaran,
   No.26, Indira Gandhi Street,
   Saligramam, Chennai-26.

2. Hit Music's,
   No.5/13, Menod Road,
   Purasawalkam, Chennai-7.

3. Vairamuthu

4. The Secretary to the Government of Tamil Nadu,
   Public Information and Broadcasting Department,
   Chennai-9.

5. The Chairman, Censor Board,
   No.26, 5th Floor, Haddows Road,
   Shastri Bhawan, Chennai. .. Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India for the relief as stated within.

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For Petitioner : Mr. P. Ram Manohar
For Respondent-1 : Mr. B. Rajendran
For Respondent-4 : Mr. R. Viduthalai, Advocate General Assisted by Mr. Raja Kalifulla, Govt. Pleader and Mr. V.R. Thangavelu, Govt. Advocate
For Respondent-5 : Mr. P. Wilson, Asst. Solicitor General of India

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O R D E R

(Delivered by the Honourable Chief Justice)

The petitioner has filed this writ petition in public interest, for a mandamus directing the first respondent to delete the song, "Bhagwan Oru Naal Aagayam Padaichar..." (*பகவான் ஒரு நாள் ஆகாயம் படைச்சார்*) featuring in the Tamil film "PERRIYAR" before releasing the film and for a further direction to the fifth respondent/Censor Board to re-consider the censor certificate issued to the said film.

2. The film "PERRIYAR" is produced by the first respondent and is based on the life of Periyar E.V. Ramasamy. The film is yet to be released, but the audio cassettes containing the songs of the film have been released by respondents 1 and 2. The third respondent, who is a well known poet in Tamil, has written the songs of the film. The fourth respondent, viz., the State of Tamil Nadu has sanctioned financial assistance for production of the film. The Censor Board has cleared the film for exhibition by grant of 'U' Certificate.

3. The petitioner takes exception to the song "Bhagwan Oru Naal Aagayam Padaichar..." featuring in the film "PERRIYAR" on the ground that it contains vulgar criticism of Goddess Sita. The petitioner has alleged that the song comments on her chastity and modesty and ridicules the mythological characters of Lord Rama and Goddess Sita. According to him Lord Rama and Goddess Sita are worshipped by millions of Hindus not only in India, but also around the world. Further according to him the Hindu way of life is mainly based on the epic, "Ramayana", and each and every event and character of "Ramayana" is holistic to Hindus.

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4. The petitioner claims that the last stanza of the song is objectionable and a free translation of the said stanza is as follows :

"Puranas and Itihas are just lies and fraud,
Speaking lies and lies, the country has itself become false!!
Look Puranas and Itihasas are not lies,
Is it? Tell me the basis,
The lines drawn by Sri Rama on the squirrel
Are still there, look it it is not rubbed off,
Oh! Three lines came when he touched it,
Then tell me,
Do Sita's back has lines?
Or Sri Rama did not even touch her?
You are an unnecessary argumentator, Don't talk,
Only now onwards I am going to speak Swami!"

The petitioner has taken exception to the underlined portion which says that if there are three lines found on the back of the squirrel even today because of the touch of Lord Rama, whether Goddess Sita also has the three lines on her back and if not, whether Lord Rama never touched Goddess Sita. According to the petitioner, the above portion in the song hurt the sentiments of Hindus and would create a feeling of insecurity and disturb their faith and devotion and ultimately lead to disturbance in public tranquility.

5. Learned counsel appearing for the petitioner submitted that late Periyar E.V. Ramasamy might be a rationalist, but he was not a nationalist. The song in question which is supposedly based on the philosophy of Periyar E.V. Ramasamy as part of his campaign against demystification of mythology contains vulgar references to Lord Rama and Goddess Sita and these words hurt the religious sentiments of Hindu community. He urged that the 'U' Certificate granted to the film by the Censor Board is required to be reviewed by directing the Censor Board to delete the song "Bhagwan Oru Naal Aagayam Padaichar..." from the film "PERRIYAR".

6. In reply, learned Advocate General submitted that the film had been scrutinized by the Central Board of Film Certification, which is an expert body constituted for that purpose and the film had passed the test of such scrutiny. The song in question must be read as a whole and in the context of the life of Periyar E.V. Ramasamy and read as a whole, the song does not offend Section 5-B (i) of the Cinematograph Act, 1952 or the guidelines framed thereunder. In support of his submission, learned Advocate General placed reliance on a number of decisions of the Supreme Court.

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7. The film "PERRIYAR" is based on the life of Periyar E.V. Ramasamy, who was leader of the Justice Party, which was later re-named as Dravida Kazhagam. Throughout his life, Periyar E.V. Ramasamy worked for the removal of untouchability, eradication of caste system, upholding of the rights of women as a crusader of social justice and spreading of rationalism, self-respect and social revolution. Being a rationalist he exorted people to imbibe scientific temper and to give up blind beliefs and superstition practices that were wasteful and harmful. In 1926, he founded the Self Respect Movement. He believed that religion continues to be vicious system for perpetuating a priestly class or in rationalistic parlance, a Brahminical hegemony and to keep the ignorant masses in fear of God. Hence, he became a crusader against God and religiosity. In a book published on the philosophy of Periyar titled "Towards a Non Brahmin Millennium" by V. Geetha and S.V. Rajadurai, in the chapter, 'Self-Respecters' Critique of Religion', the philosophy of Periyar is explained as follows : (p.307)

> "If one were to place this period of his life in the context of his latter-day ctiriques of Hinduism, which were, often, satiric and provocative, it is possible to see in such matters as his relationship to his two brahmin mendicant companions, the play of a carnivalesque energy; one that eternally delights in invoking subversion and irreverence alongside and within structures and modes of authority and power. It was this ludic element in Periyar's criticisms of religion which sustained and rendered attractive his debunking of religion and Gods and his scornful, but informed, rejections of scripture. Guided by Periyar and inspired by his transparent iconoclasm, many a Self-Respecter came to advance a theory and practice of atheism and irreverence, which reflected not only great anger and indignation, but also a saturnalian urge to debunk, parody and stand the world on its head.
>
> 'The Self-Respecters' and Periyar's views on religion comprised at least five major aspects. There was the critique of the Brahmin Priest and his ideology of privilege, rule and command, in short, a critique of brahmins and Brahminism. Then, there was the critique of scripture; of Vedas, Itihasas and Puranas, at once rationalist and subversive. Thirdly, there was the criticism of religion as world-view, an ethos that determined the believer's views on sacred, profane and

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secular matters. Fourthly, we have an exposition and critique of religious doctrine, of the principles that sustain belief and direct action and, lastly, there was the critique of religious practices, of festivals and rituals and happenings."

8. As observed by Vivian Bose, J., as he then was in the Nagpur High Court in the case of Bhagwati Charan Shukla vs. Provincial Government, A.I.R. 1947 Nagpur 1, the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This approach has been time and again accepted by the Supreme Court in judging the effect of exhibition of a film or publication of a book.

9. In K.A. Abbas vs. Union of India, (1970) 2 S.C.C. 780, the Supreme Court was concerned with a documentary film titled "A Tale of Four Cities". The appellant contended in a petition under Article 32 that he was entitled to a certificate for unrestricted public exhibition thereof. What Hidayatullah, C.J., speaking for the Court, said needs to be reproduced(SCC pp.801-3,paras 49-50) :

"49. We may now illustrate our meaning how even the items mentioned in the directions may figure in films subject either to their artistic merit or their social value overweighing their offending character. The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in toto and forever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the

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redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censor's scissors. Thus audiences in India can be expected to view with equanimity the story of Oedipus son of Laius who committed patricide and incest with his mother. When the seer Tiresias exposed him, his sister Jocasta committed suicide by hanging herself and Oedipus put out his own eyes. No one after viewing these episodes would think that patricide or incest with one's own mother is permissible or suicide in such circumstances or tearing out one's own eyes is a natural consequence. And yet if one goes by the letter of the directions the film cannot be shown. Similarly, scenes depicting leprosy as a theme in a story or in a documentary are not necessarily outside the protection. If that were so Verrier Elwyn's Phulmat of the Hills or the same episode in Henryson's Testament of Cressaid (from where Verrier Elwyn borrowed the idea) would never see the light of day. Again carnage and bloodshed may have historical value and the depiction of such scenes as the Sack of Delhi by Nadirshah may be permissible, if handled delicately and as part of an artistic portrayal of the confrontation with Mohammad Shah Rangila. If Nadir Shah made golgothas of skulls, must we leave them out of the story because people must be made to view a historical theme without true history? Rape in all its nakedness may be objectionable but Voltaire's Candide would be meaningless without Cunegonde's episode with the soldier and the story of Lucrece could never be depicted on the screen.

50. Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer. It must, however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous

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etchings of Goya do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the Kamasutra but a documentary from them as a practical sexual guide would be abhorrent."

10. The Supreme Court in Gajanan Visheshwar Birjur Vs. Union of India, (1994) 5 SCC 550, while dealing with an order of confiscation of books containing Marxist literature, referred to the supremacy of the fundamental right of freedom of speech and expression, and expressed its unhappiness over the attempts at thought control in a democratic society like ours with these words:-

"Before parting with this case, we must express our unhappiness with attempts at thought control in a democratic society like ours. Human history is witness to the fact that all evolution and all progress is because of power of thought and that every attempt at thought control is doomed to failure. An idea can never be killed. Suppression can never be a successful permanent policy. Any surface serenity it creates is a false one. It will erupt one day. Our constitution permits a free trade, if we can use the expression, in ideas and ideologies. It guarantees freedom of thought and expression – the only limitation being a law in terms of clause (2) of Article 19 of the Constitution. Thought control is alien to our constitutional scheme. To the same effect are the observations of Robert Jackson, J. in American Communications Association V. Douds, 339 US 382, 442-43 (1950): 94 L Ed 925 with reference to the US Constitution:

'Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored'."

11. In Raj Kapoor vs. State, (1980) 1 S.C.C. 43, the Supreme Court was dealing with a pro bono publico prosecution against the producer, actors and others connected with a film called “Satyam, Shivam, Sundaram” on the ground of prurience, moral depravity and

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shocking erosion of public decency. A petition to quash the proceedings was moved and ultimately the matter was taken up to Supreme Court. The Supreme Court held that the censor certificate is a relevant material, important in its impact, though not infallible in its verdict. Krishna Iyer, J., speaking for the Court, said (SCC pp.47-50, paras 8-15) :

> "Art, morals and law's manacles on aesthetics are a sensitive subject where jurisprudence meets other social sciences and never goes alone to bark and bite because State-made strait-jacket is an inhibitive prescription for a free country unless enlightened society actively participates in the administration of justice to aesthetics.
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> 9. The world's greatest paintings, sculptures, songs and dances, India's lustrous heritage, the Konarks and Khajurahos, lofty epics, luscious in patches, may be asphyxiated by law, if prudes and prigs and State moralists prescribe paradigms and prescribe heterodoxies.
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> 14. I am satisfied that the Film Censor Board, acting under Section 5-A, is specially entrusted to screen off the silver screen pictures which offensively invade or deprave public morals through oversex. There is no doubt — and counsel on both sides agree — that a certificate by a high-powered Board of Censors with specialised composition and statutory mandate is not a piece of utter inconsequence. It is relevant material, important in its impact, though not infallible in its verdict. But the Court is not barred from trying the case because the certificate is not conclusive. Nevertheless, the magistrate shall not brush aside what another tribunal has, for similar purpose, found. Maybe, even a rebuttable presumption arises in favour of the statutory certificate but could be negatived by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed.
>
> 15. I am not persuaded that once a certificate under the Cinematograph Act is issued the Penal Code, pro tanto, will hang limp. The Court will examine the film and judge whether its public display, in the given time and clime, so breaches public morals or depraves basic decency as to offend the penal provisions. Statutory expressions are not petrified by time but must be updated by changing ethos even as popular ethics are not absolutes but abide and evolve as community consciousness enlivens and escalates.

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Surely, the satwa of society must rise progressively if mankind is to move towards its timeless destiny and this can be guaranteed only if the ultimate value-vision is rooted in the unchanging basics, Truth — Goodness — Beauty, Satyam, Shivam, Sundaram . The relation between Reality and Relativity must haunt the Court's evaluation of obscenity, expressed in society's pervasive humanity, not law's penal prescriptions. Social scientists and spiritual scientists will broadly agree that man lives not alone by mystic squints, ascetic chants and austere abnegation but by luscious love of Beauty, sensuous joy of companionship and moderate non-denial of normal demands of the flesh. Extremes and excesses boomerang although some crazy artistes and film directors do practise Oscar Wilde's observation: 'Moderation is a fatal thing. Nothing succeeds like excess'."

12. In Bobby Art International vs. Om Pal Singh Hoon, A.I.R. 1996 S.C. 1846, the Supreme Court held that a film that illustrates the consequences of a social evil necessarily must show that social evil. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. The drawing of the line should be left to the sensibilities of expert body of tribunal. The Court observed:

"30. In sum, we should recognise the message of a serious film and apply this test to the individual scenes thereof: do they advance the message? If they do they should be left alone, with only the caution of an 'A' certificate. Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.

31. A film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. At the same time, the depiction must be just sufficient for the purpose of the film. The drawing of the line is best left to the sensibilities of the expert Tribunal. The Tribunal is a multi-member body. It is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines,

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should be permitted to go about its task.

33. We are of the opinion that the Tribunal had viewed the film in its true perspective and had, in compliance with the requirements of the guidelines, granted to the film an 'A' certificate subject to the conditions it stated. We think that the High Court ought not to have entertained the first respondent's writ petition impugning the grant of the certificate based as it was principally upon the slurs allegedly cast by the film on the Gujjar community. We find that the judgment under appeal does not take due note of the theme of the film and the fact that it condemns rape and the degradation of and violence upon women by showing their effect upon a village child, transforming her to a cruel dacoit obsessed with wreaking vengeance upon a society that has caused her so much psychological and physical hurt, and that the scenes of nudity and rape and the use of expletives, so far as the Tribunal had permitted them, were in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim."

13. Applying the basic principles laid down in the cases referred to above, we are of the view that the Censor Board, which is a multi-member body and is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task. The Censor Board has viewed the film in question in its true perspective and had, in compliance with the requirements of the guidelines, granted the Certificate to the film. It is pertinent to note that the two of the members of the Panel which granted Certificate to the film are women members and they did not find anything objectionable either in the film or in the song about which the petitioner has complained in the present petition. The film is about the life and teachings of Periyar E.V. Ramasamy, and reference to his views about the Vedic and Puranic Gods is inevitable. We hasten to add that several books written about the principles and philosophies of Periyar E.V. Ramasamy and they are freely available in the market and they are also available in the audio form. We are not persuaded to read the song, "Bhagwan Oru Naal Aagayam Padaichar..." featuring in the film, the way in which the petitioner wants us to read it. We therefore do not find any reason to interfere with the decision of the Censor Board to grant 'U' Certificate to the film.

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14. In our opinion, the writ petition is devoid of any merit and it is, therefore, dismissed. No costs. Consequently, M.P. No.1 of 2007 is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to the Government of Tamil Nadu,
   Public Information and Broadcasting Department,
   Chennai-9.
2. The Chairman, Censor Board,
   No.26, 5th Floor, Haddows Road,
   Shastri Bhawan, Chennai.

+ one cc to Mr. P. Wilson, Assistant Solicitor General of India sr no. 18846
+ one cc to the Government Pleader sr no. 18660
+ one cc to Mr. B. Rajendran, Advocate sr no. 18617
+ one cc to Mr. P. Rammanohar, Advocate sr no. 18474

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